



September 13, 2000

Mr. Dennis P. Duffy
General Counsel
University of Houston System
E. Cullen Building, Room 212
Houston, Texas 77204-2162

OR2000-3529

Dear Mr. Duffy:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 139875.

The University of Houston System (the "university") received a request for "a copy of the Campus Network Upgrade proposal that was recently awarded to Southwestern Bell." Based on the information submitted to this office, it appears that the university seeks an attorney general decision for the requested information because a third party's proprietary interest is implicated. You have notified Southwestern Bell Telephone ("SWBT") of the request in compliance with section 552.305 of the Government Code. *See* Gov't Code § 552.305(b) (permitting interested third party to submit to attorney general reasons why requested information should not be released). SWBT has responded to the notice asserting that the information is excepted from public disclosure pursuant to sections 552.104 and 552.110 of the government Code. It argues that numerous provisions of the proposal fall within either one or both of the exceptions set forth in section 552.110. Thus, we will consider SWBT's claims. We note, however, that any exceptions claimed by the university are waived due to the university's failure to comply with section 552.301(e)(1) by submitting its arguments regarding the applicability of any exceptions. *See* Gov't Code § 552.302.

Government Code section 552.110 protects the property interests of private parties by excepting from disclosure two types of information: (1) trade secrets obtained from a person and privileged or confidential by statute or judicial decision and (2) commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure

would cause substantial competitive harm to the person from whom the information was obtained.

The commercial or financial branch of section 552.110 requires the business enterprise whose information is at issue to make a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would result from disclosure. *See Open Records Decision No. 661 at 5-6 (1999)*. In support of its claim that a portion of the requested information is excepted from public disclosure under the commercial or financial branch of section 552.110, SWBT states the following:

Enterasys Networks is engaged in vigorous competition with [SWBT] for numerous multimillion dollar contracts for Local Area Networks and Wide Area Networks. Disclosure of the SWBT response to the University of Houston RFP for the Data Network, would result in the transferal of unique commercial and financial information regarding the manner in which SWBT analyzes RFPs, designs and engineers its networks to satisfy such RFPs, unique relationships with vendors, and its pricing strategy, among other things.

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. . . . SWBT is in vigorous competition with Enterasys Networks. SWBT and Enterasys Networks will be competitively bidding on throughout the country for Local Area Networks and Wide Area Networks. It is absolutely certain that disclosure of SWBT's response to the University of Houston RFP would cause substantial competitive harm to SWBT when bidding on these other Local Area Network and Wide Area Network RFPs. The SWBT University of Houston proposal would provide Enterasys Networks a road map for copying SWBT's unique engineering processes and approach to such bids, as well as, at least indirectly, disclosing unique pricing arrangements between SWBT and numerous vendors who would provide equipment supporting the University of Houston Networks. Allowing disclosure in these circumstances would turn what is supposed to be a fair and competitive bidding process into a situation where SWBT, which developed a high quality, unique, and innovative approach to bidding, is penalized by having to surrender the intellectual work product of its engineers and other personnel to its competitors.

We have reviewed SWBT's arguments and the submitted information and conclude that the information marked for redaction by SWBT is excepted from public disclosure under the commercial or financial branch of section 552.110. Thus, we do not address SWBT's

arguments under the trade secret prong of section 552.110. For your reference, we have marked the relevant information which must be withheld.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink that reads "Julie Reagan Watson". The signature is fluid and cursive, with the first name "Julie" being the most prominent.

Julie Reagan Watson
Assistant Attorney General
Open Records Division

JRW/pr

Ref: ID# 139875

Encl. Submitted documents

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